

Federal Procurement Regulations

Purpose:

This instruction sets forth the policy to reaffirm Federal Procurement regulations that state nonprofit food service funds may not be used if proper procurement procedures are not followed as defined in 7 CFR Part 3016.60(b).

Scope:

Sponsors participating in the School Breakfast Program (SBP), National School Lunch Program (NSLP), Child and Adult Care Food Program (CACFP), and/or the Summer Food Service Program (SFSP).

Description:

USDA is concerned that School Food Authorities (SFA) are not drafting their own specifications and procurement documents for certain software acquisitions and may not be properly responding to protests and concerns raised by potential contractors.

The federal regulation 7 CFR Part 3016.60(b) prohibits awarding contracts to any entity that develops or drafts specifications, requirements, statements of work, invitations for bids, requests for proposals, contract terms and conditions or other procurement documents. Information from potential bidders must be appropriately modified to develop tailored specifications; otherwise, these bidders must be excluded from competing for such procurements. Any action which diminishes open and free competition seriously undermines the integrity of the procurement process and may subject the SFA to bid protests.

In regard to bid protests, 7 CFR 3016. (b)(12), School Food authorities must have protest procedures in place to handle and resolve disputes relating to their procurements and must in all instances disclose information regarding a protest to their State Agency.

Therefore, any School Food Authority electing to use a potential contractor's information, such as copying a list of features drafted by a potential contractor, instead of developing its own procurement documents and processes, cannot use nonprofit school food service funds for the resulting contract if that potential vendor is permitted to compete for the award, whether or not the contract is awarded to that potential vendor.

State agencies are required to monitor SFA procurement practices, including the SFA's protest procedures, and initiate corrective actions when violations of USDA regulations are identified.

SOURCE: USDA FOOD AND NUTRITION POLICY MEMORANDUM #05-07, DATED DECEMBER 3, 2004.